

**FCC DOCKET NO. CC 97-231**  
**AFFIDAVIT OF JAMES A. TAMPLIN, JR.**

unbranded services. Nothing in the Commission's orders suggests that the Act permits BellSouth or any other BOC to avoid one set of obligations under the Act by asserting that it will be unable to comply with other obligations under the Act. Under the Act, AT&T is entitled both to customized routing to the extent it is technically feasible and it is entitled to branded services if BellSouth chooses to brand its own services. Until BellSouth can provide selective routing or unbranded services, it should not be using its own brand when handling OS/DA calls from CLEC customers.

70. As described above, BellSouth is still not providing customized routing to AT&T's OS/DA platform in Georgia. And BellSouth has failed to make its OS/DA service available for resale on a rebranded or unbranded basis. Apart from BellSouth's bare assertion that it is prepared to offer the services, BellSouth has offered no proof that it is any more capable of providing customized routing or willing to unbrand its own services in Louisiana than in Georgia. There is thus no basis for finding that BellSouth has made "nondiscriminatory access to ... operator services [and] directory assistance" available in Louisiana today. 47 U.S.C. § 251(b)(3).

**III. BELLSOUTH IS NOT READY TO PROVIDE NONDISCRIMINATORY ACCESS TO EXISTING COMBINATIONS OF NETWORK ELEMENTS.**

71. In light of its position that it has no enforceable legal obligation to provide unbundled access to existing combinations of network elements, BellSouth refused to take the technical steps that are necessary for BellSouth to provide them. That BellSouth has

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even pretended to be willing to participate in joint testing reflects the fact that the Kentucky Public Service Commission unequivocally ordered BellSouth to make UNE combinations available at cost-based rates. Nevertheless, there has been no meaningful progress to date. It is therefore clear that BellSouth has not yet developed the capability to provide combinations of unbundled network elements, even if BellSouth were willing to do so where it has been unequivocally required by PSC order or an interconnection agreement.

72. Two facts demonstrate that BellSouth is unable to provide nondiscriminatory access to existing UNE combinations in commercial volumes. First, all orders must be submitted manually, because BellSouth has failed to modify its EDI interface to permit CLECs to place orders electronically. Indeed, Mr. Stacy admitted in his OSS affidavit in this proceeding that BellSouth has "not yet undertaken" development of the modifications of its electronic interface that will be necessary to permit CLECs to order UNE combinations:

The changes BellSouth would have to make to our electronic interfaces to accommodate UNE combinations would include modifying them to accept a new UNE order type, and substantial inventory and billing changes .... Since BellSouth is pursuing its legal disagreement with the FCC position on providing UNE combinations as a matter of law, we therefore have not yet undertaken such development.

Affidavit of William N. Stacy (OSS) ¶ 59 (emphasis added). Even more recently, BellSouth admitted that it is unable to process orders for combinations of unbundled network elements in Kentucky unless the orders are expressly identified as "test orders" to permit BellSouth to give them special handling.

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73. Second, as described in Part II above, BellSouth refuses or has failed to demonstrate the ability to give CLECs that purchase unbundled local switching and other UNEs the usage and billing data that CLECs need (1) to bill end users for services, (2) to bill IXCs access charges for originating and terminating toll calls, and (3) to bill other carriers reciprocal compensation for terminating local and intraLATA toll calls.

74. Moreover, the limited testing AT&T and BellSouth have conducted in Florida with respect to combinations of network elements confirms that BellSouth is not ready to meet its obligations under the Act:

First, the test has not demonstrated how AT&T would order combinations of unbundled network elements electronically because BellSouth has refused to make a usable EDI interface available.

Second, the test has not demonstrated BellSouth's ability to deal with even a reasonable volume of UNE orders from a variety of locations and end users, much less commercial volumes of such orders from a broad geographic area. Accordingly, there is no basis for evaluating BellSouth's performance against appropriate performance standards.

Third, the test has not demonstrated BellSouth's ability to suppress its billing to IXCs for originating or terminating access services which AT&T, as the CLEC purchasing the unbundled switch, would be entitled to collect pursuant to Commission

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rules. BellSouth intends to continue charging IXC's for originating and terminating intraLATA or interLATA access, even in circumstances where BellSouth is clearly not entitled to collect such access revenues.

Fourth, the test has not demonstrated BellSouth's ability to provide the access records AT&T will need to bill originating or terminating access charges; BellSouth admits that it cannot provide the records today in a useable format.

Fifth, at least in part because BellSouth has treated orders for combinations of network elements as the equivalent of resale orders, the test has not demonstrated numerous other capabilities essential to provisioning combinations of unbundled network elements, including BellSouth's ability:

- to render a correct bill for CLEC's use of usage-sensitive unbundled network elements;
- to provide usage and billing data to CLECs for terminating local and intraLATA toll calls to enable CLECs to bill and collect reciprocal compensation; and

75. AT&T's experience with BellSouth in Florida demonstrates that BellSouth has been unwilling and currently is unable to meet its obligation to provide nondiscriminatory access to network elements in accordance with the Act. Because many of these implementation issues must be resolved even if AT&T, rather than BellSouth, does the

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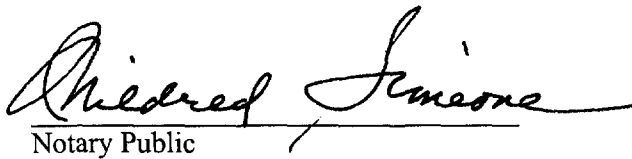
combining, this experience confirms that BellSouth today has not and cannot make network elements available to CLECs in a manner that would allow them to provide telecommunications services.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on November 20, 1997

  
James A. Tamplin, Jr.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 20<sup>th</sup> DAY OF NOVEMBER, 1997.

  
Notary Public

My Commission Expires:

**MY COMMISSION EXPIRES  
JANUARY 29, 2000**

ATTACHMENT 1

BellSouth Interconnection Services    205 988-7600  
Suite 350    Fax 205 988-6969  
One Chase Corporate Drive  
Hoover, Alabama 35244

Fred P. Monacelli  
Sales Assistant Vice President

October 7, 1997

Ms. Anne K. Bingaman  
Senior Vice President - LCI  
President, Local Telecommunications Division  
8180 Greensboro Drive  
McLean, Virginia 22102

Dear Ms. Bingaman:

This is in response to your September 24, 1997, letter to Joe Baker. In that letter you asked that BellSouth clearly state its position relative to LCI's unbundled network element (UNE) platform plan.

BellSouth considers LCI to be a valued customer. Regarding LCI's platform plan, BellSouth offers resale service and/or UNEs that LCI can combine with its own facilities to provide a telecommunications service or combine BellSouth UNEs itself to provide a unique telecommunications service or to duplicate a BellSouth retail service. BellSouth's position is consistent with the 8th Circuit Court of Appeal's July 18, 1997 opinion. The 8th Circuit plainly stated that the Act "unambiguously indicates that the requesting carriers will combine the unbundled network elements themselves." Therefore, there is no legal duty on the part of BellSouth to provide combined network elements to LCI. Consistent with the 8th Circuit's ruling, if it is LCI's plan to utilize all BellSouth network elements to provide finished telephone service, LCI may purchase all of the individual unbundled network elements needed to provide finished telephone service, but LCI must combine the necessary elements. The 8th Circuit ruling clearly finds, however, that BellSouth, as an ILEC, has no obligation to combine network elements. The 8th Circuit expressly stated in upholding the FCC's rule that "[our] ruling finding that [the Act] does not require an incumbent LEC to combine the elements for a requesting carrier establishes that requesting carriers will in fact be receiving the elements on an unbundled basis." Thus, the only meaning that can now be given to FCC Rule 51.315(b) is that an incumbent LEC may not further unbundle a network element to be purchased by another local provider unless explicitly requested to do so by that provider. The rule cannot be read as requiring ILEC's to deliver combinations to providers such as LCI.



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In all states, when LCI orders Individual network elements that, when combined by LCI, duplicate a retail service provided by BellSouth, BellSouth will treat, for purposes of billing and provisioning, that order as one for resale. When LCI orders Individual network elements that, when combined by LCI, creates a unique LCI telecommunications service, BellSouth will treat, for purposes of billing and provisioning, that order as one for unbundled network elements.

BellSouth, however, is examining the viability of providing various combinations of UNEs as a service to its interconnection customers. Such service offerings would have prices that reflect the 8th Circuit's finding that the use of unbundled network elements involves greater risk to the other provider than does resale.

I trust that this response provides the details you were seeking. As your Account Team, we stand ready to support LCI's local service initiatives with the same professionalism and customer focus we provide on the "access" side of your business.

Sincerely,



Fred Monacelli

cc: Joe Baker

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ATTACHMENT 2

RECEIVED SEP 16 1997



BellSouth Telecommunications, Inc. 404 827-7020  
Suite 4511 Fax 404 521-2311  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

Mark L. Feldler  
President - Interconnection Services

September 12, 1997

William J. Carroll  
Vice President  
AT&T Communications, Inc.  
Room 4170  
1200 Peachtree Street  
Atlanta, Georgia 30309

Re: Your August 29, 1997, letter to Duane Ackerman

Dear Jim:

As committed on September 5, 1997, I am responding to the issues discussed in your August 29, 1997 letter to Duane Ackerman. Let me begin by saying BellSouth is not delaying AT&T's entry into the local market. BellSouth has expended hundreds of millions of dollars on, and has dedicated hundreds of employees to, the sole task of assisting new local service providers such as AT&T in entering the local market. The task, as you admitted in your August 1, 1997 letter, is not without tremendous challenges. Other local providers are entering the local market, investing in their own facilities, and are competing with BellSouth and winning local customers. These local providers are using the systems in which BellSouth has been investing hundreds of millions of dollars and are finding that they allow for real competition. Local competition is here and will continue to grow whether AT&T enters the market now or some time in the future.

Addressing your assertion that there is an "increasing tendency to push downward within BellSouth employee ranks, responsibility for critical issues," given the number and complexity of the implementation issues involved, both companies need to empower employees with expertise and knowledge in many disciplines at many levels to move forward and resolve implementation issues. Our role as members of upper management is to provide policy direction and support to those empowered by us. As an officer of BellSouth, I am involved with determining the policies of BellSouth as well as guiding the essential individuals in my department in the resolution of major issues concerning the implementation of AT&T interconnection agreements as well as the implementation of other agreements BellSouth has executed. BellSouth will continue to devote the time and energy of many highly capable people, and significant capital, to meeting AT&T's demands together with the needs and demands of the hundred plus other new local service providers that have contracted with BellSouth for interconnection services.

BellSouth has stated to AT&T at least three times in writing and numerous times verbally that BellSouth is committed to continuing operational testing of the combined unbundled loops and ports (UNE-P as you refer to it) in Florida and Kentucky and that it has committed the

appropriate personnel to support this process. To date, AT&T has, pursuant to Attachment 4, section 2.2 of the BellSouth /AT&T Interconnection Agreement, identified and described only four combinations, which were received by BellSouth in April of 1997. Rather than responding to BellSouth's written and verbal commitments by identifying any further combinations, or sending additional orders and testing of the systems, AT&T has only continued to "paper the record" with assertions that BellSouth is not committed to testing. BellSouth hereby once again reaffirms that it stands ready, willing and able to test the UNE ordering, provisioning and billing systems. It is only through such testing that the companies can determine and address where the problems, if any, lie. While BellSouth believes it is aware of AT&T's UNE testing requirements for Florida and Kentucky, if AT&T believes that a restatement of those testing requirements is required, then by all means communicate them to BellSouth again.

You further requested that BellSouth confirm certain positions regarding the 8th Circuit Court of Appeal's July 18, 1997 opinion as well as the recently announced FCC decisions regarding both Ameritech's 271 application and Shared Transport. Following are BellSouth's responses to your confirmation requests.

**AT&T's confirmation request:**

**1. BellSouth will provide all combinations of unbundled network elements, including those that BellSouth asserts may replicate existing BellSouth services, at rates based on forward-looking economic costs:**

**2. BellSouth will not separate unbundled network elements requested by AT&T where such elements are currently combined in BellSouth's network. That is, where AT&T orders combinations of UNEs that in the ordinary course are already combined within BellSouth's network, such as the platform being ordered in Florida, BellSouth will provide these elements as combined in BellSouth's network: and**

**3. BellSouth will impose no additional charges above the sum of the rates for all applicable UNEs contained in our interconnection agreements for UNEs that are already combined in BellSouth's network.**

**BellSouth's response:**

The 8th Circuit plainly stated that the Act "unambiguously indicates that the requesting carriers will combine the unbundled network elements themselves." Therefore, there is no legal duty on the part of BellSouth to provide combined network elements to AT&T. BellSouth will provide to AT&T, at the rates established by the various state commissions, the individual network elements delineated in the AT&T/BellSouth Interconnection Agreement, and AT&T may combine the ordered elements in any fashion it chooses. Further, consistent with the 8th Circuit's ruling, if it is AT&T's plan to utilize all BellSouth network elements to provide finished telephone service, AT&T may purchase all of the individual unbundled network elements needed to provide finished telephone service, but AT&T must combine the necessary elements. The 8th Circuit ruling clearly finds, however, that BellSouth, as an ILEC, has no obligation to do so. The 8th Circuit expressly stated in upholding the FCC's rule that "[our] ruling finding that [the Act] does not require an incumbent LEC to combine the elements for a requesting carrier establishes that requesting carriers will in fact be receiving the elements on an unbundled basis." Thus, the only meaning that can now be given to FCC Rule 51.315(b) is that an

incumbent LEC may not further unbundle a network element to be purchased by another local provider unless explicitly requested to do so by that provider. The rule cannot be read as requiring ILEC's to deliver combinations to providers such as AT&T. BellSouth, however, is examining the viability of providing various combinations of UNEs as a service to its interconnection customers. Such service offerings would have prices that reflect the 8th Circuit's finding that the use of unbundled network elements involves greater risk to the other provider than does resale.

BellSouth nonetheless recognizes that the interconnection agreements that have been executed thus far obligate BellSouth to accept and provision UNE combination orders. Thus, until the 8th Circuit's opinion becomes "final and non-appealable," BellSouth will abide by the terms of those interconnection agreements as BellSouth expects AT&T will. Accordingly, assuming execution of the Alabama agreement, BellSouth will accept orders for and provision the four UNE combinations identified and described by AT&T pursuant to Attachment 4, section 2.2 of the Agreements. In all states except Kentucky (Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee), when AT&T orders a combination of network elements or orders individual network elements that, when combined, duplicate a retail service provided by BellSouth, BellSouth will treat, for purposes of billing and provisioning, that order as one for resale. In Kentucky, when AT&T orders a combination of network elements or orders individual network elements that when combined duplicate a retail service provided by BellSouth, BellSouth will treat the order for purposes of billing and provisioning, as one for unbundled network elements. In all states, when AT&T fulfills its obligation under Attachment 4, section 2.2 and identifies combinations of unbundled network elements that, when combined do not duplicate a retail service, BellSouth will accept and provision that order as one for unbundled network elements priced at the individual network element rates. In Alabama, where BellSouth and AT&T have not yet executed an interconnection agreement, BellSouth is willing, until the 8th Circuit's opinion becomes final, to execute an interconnection agreement that reflects the terms described above. That agreement would be subject to modification as discussed below. This interim accommodation is consistent with what BellSouth and AT&T have done in other states. I understand that such an interconnection agreement has been proposed and I will instruct Jerry Hendrix to execute that agreement after he has had a opportunity to fully review the agreement.

Immediately upon the 8th Circuit's opinion becoming final, BellSouth expects, pursuant to section 9.3 of the General Terms and Conditions of the Interconnection Agreement, that the interconnection agreements will be modified to remove all references to BellSouth's obligation to combine unbundled network elements for AT&T and to otherwise reflect the Court's decision. If following these modifications, AT&T believes that, rather than directly meeting its obligation under the Act to do the combining of any BellSouth UNEs, it would prefer to have BellSouth perform services related to combining and/or operating and maintaining combined elements, BellSouth, as stated above, would consider such a request and be prepared to enter into negotiations regarding appropriate terms and conditions.

#### **4. Florida UNE Testing - Billing**

Concerning the billing received by AT&T in the Florida testing, I offer the following corrections and clarifications. For the UNE-P orders involved with this test, the following elements may be billed in the CRIS billing system:

**CRIS**

Unbundled Local Switching - Line Port (ULS-LP) (NRC + Monthly recurring)  
 Unbundled Local Switching - Switching Functionality (ULS-SF) (per MOU)  
 Unbundled Local Switching - Trunk Port (ULS-TP) (per MOU)  
 Unbundled Tandem Switching - Switching Functionality (UTS-SF) (per MOU)  
 Unbundled Tandem Switching - Trunk Port (UTS-TP) (per MOU)  
 Unbundled Interoffice Transport - Shared (UIT-S) (per MOU and per MOU-mile)  
 Operator and DA elements (have not been implemented for this testing timeframe)

As of August 14, 1997, BellSouth has the capability to bill the MOU based switching and transport elements for all local direct dialed calls originating from ULS-LPs (or in this case UNE-Ps). In your list, you also included Unbundled Interoffice Transport - Dedicated (UIT-D), Unbundled Packet Switching (UPS), AIN, LIDB, SS7 Signaling, 800 Database, Directory Access to DA Service, Directory Assistance Transport and Directory Assistance Database Service. These elements are not applicable for the scenarios that you have requested to be tested in Florida and Kentucky.

You also stated that AT&T has yet to receive the daily usage recordings that BellSouth agreed to transmit during the Florida test. As issues regarding daily usage recording were encountered, they were addressed by BellSouth and corrective actions were taken. Further testing was limited due to the lack of actual usage found on the four accounts. The Jan Burriss/Pam Nelson team that meets regularly to discuss and resolve issues recently agreed that the testing team should formalize the usage recording testing. The team agreed to implement a logging system so that the users would record their various calls, time of day, type of call, duration, etc., and provide the log to BellSouth so that BellSouth could follow the call through its systems.

In connection with the UNE concept test, BellSouth is not currently sending AT&T access records associated with UNEs. Pursuant to the law at the time, BellSouth's position had been that BellSouth should continue to bill access to the IXC and that transmitting records was therefore not required. Subsequent rulings now appear to support the need for BellSouth, in instances where the use of unbundled network elements is not duplicating an existing BellSouth service, to send records in order for the local provider to bill the IXC interstate access. Given these changes, BellSouth concurs that BellSouth and AT&T need to come to an agreement of the formatting of these access records. In addition, BellSouth and AT&T need to work through industry fora to reach agreement on standards for record exchange and meet point billing.

BellSouth does not agree with your assessment of BellSouth's participation on Call Flow discussions. BellSouth met with your representatives in May of 1997, and participated on a conference call in June of 1997 in an attempt to reach agreement. However, due to key differences in the underlying positions of the companies, the representatives were not able to reach agreement except for those call flows for intraswitch local calls. BellSouth, as always, stands ready to meet with AT&T to further discuss call flows and it is my understanding that such a meeting has been scheduled.

I trust that this answers any question you may have had. BellSouth, as it has consistently done in the past, is prepared to discuss all issues that AT&T may raise. To the extent you have any

further questions or comments regarding BellSouth's policies or major issues regarding implementation of the AT&T/BellSouth interconnection agreement, please direct them to me.

Regards,

*M. L. Feidler*  
Mark Feidler

# ATTACHMENT 3





BellSouth Telecommunications, Inc.  
Suite 4611  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

404 527-7630  
Fax 404 521-2311

Mert L. Felder  
President - Interconnection Services

May 29, 1997

Mr. A. J. Calabrese  
LIAM Vice President  
AT&T  
Room 10144  
1200 Peachtree St.  
Atlanta, GA 30309

Dear AJ:

This is in response to your letter dated May 23, 1997, regarding your request that BellSouth provide information concerning billing for Unbundled Network Elements (UNE).

The State Commissions in the BellSouth region, with the exception of Kentucky<sup>1</sup>, have ruled that the recombination of network elements for the purpose of providing a service, which is essentially the equivalent of an existing BellSouth retail service, should be priced and treated as a resold retail service and not as the simple combination of two or more unbundled network elements. What AT&T refers to as "UNE-Ps", as we understand it, are recombinations of elements which equate to existing retail services and, therefore, should be priced and treated in those states as resold retail services. Our response to your letter is predicated on that understanding.

We understand that AT&T has appealed several of these rulings, and in fact, we have appealed the Kentucky ruling touching on this subject. Therefore, the answers we give you at the present time have to be taken with the understanding that what we say is predicated on our understanding of the law as it applies today, which may, of necessity, be modified as things change and evolve in the courts, at the FCC and in front of the state commissions. We say this because we fully intend to comply with the law and all applicable orders and regulations, as well as any pronouncements having the force and effect of law, and we recognize, and expect that you recognize, that subsequent events may affect our current positions.

Subject to the foregoing, attached is a matrix which restates AT&T's questions and provides BellSouth's positions on each issue. Of course, our responses are based on our understanding of the "services," such as "local calls, intra-switch," which you have attempted to identify in your letter. We are certainly willing, however, to conduct further discussions with you on these matters should it appear, from our response, that we have misapprehended your specific question.

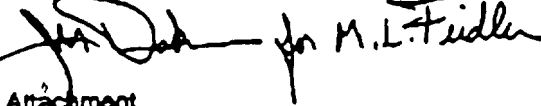
<sup>1</sup> We acknowledge that there is also a question about the status of this issue in Florida. The Florida Public Service Commission evidently feels that it has not yet ruled on the pricing for recombined UNEs that are the essential equivalent of BellSouth's retail services. Until this is resolved we intend to treat requests for recombined UNEs which will substantially replicate existing retail services in the same manner as such requests received in our states other than Kentucky.

Mr. A. J. Calabrese  
May 28, 1997  
Page 2

I trust that this letter provides you with the information desired to clarify BellSouth's position regarding UNEs. BellSouth wishes to continue to work with AT&T to clearly communicate information in the most effective manner possible.

Quinton Sanders (770-492-7580) or Terrie Hudson (770-492-7590) are available to provide additional information to you and your staff.

Sincerely,

 for M.L. Fidler

Attachment

## MATRIX

## 1. When AT&amp;T orders UNE-P, what will BellSouth bill for:

- Local Calls, Intra-Switch?
- Local Calls, Inter-Switch?
- Toll Calls, IntraLATA?
- Toll Calls, Intrastate (InterLATA)?
- Toll Calls, Interstate (InterLATA)?

	All BST states Except Kentucky	Kentucky
Local Calls, Intra-Switch	BST will bill AT&T discounted flat rate local service	BST will bill AT&T for each UNE utilized
Local Calls, Inter-Switch	BST will bill AT&T discounted flat rate local service	BST will bill AT&T for each UNE utilized
Toll Calls, IntraLATA*	BST will bill AT&T discounted IntraLATA Toll	BST will bill AT&T discounted IntraLATA Toll
Toll Calls, Intrastate (InterLATA)**	BST will bill the IXC access	BST will bill the IXC access
Toll Calls, Interstate (InterLATA)**	BST will bill the IXC access	BST will apply appropriate UNE usage charges

## 2. When AT&amp;T provides services through UNE-P, what information is BellSouth recording and sending AT&amp;T?

	All BST states Except Kentucky	Kentucky
Local Calls, Intra-Switch & Local Calls, Inter-Switch	BST will not record and send records for originating local calls.	BST will record and send records for originating local calls.
Toll Calls, IntraLATA*	BST will record and send records for toll calls.	BST will record and send records for toll calls
Toll Calls, Intrastate (InterLATA)**	BST will record and bill access consistent with what BST does today	BST will record and bill access consistent with what BST does today
Toll Calls, Interstate (InterLATA)**	BST will record and bill access consistent with what BST does today	BST will record and bill appropriate UNE usage charges

3. When AT&T provides services through UNE-P, what will the UNE bill contain: format, elements, BAN, etc.?

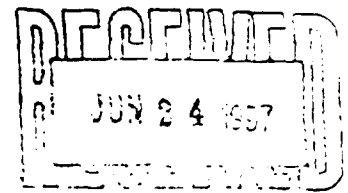
	All BST states Except Kentucky	Kentucky
Local Calls, Intra-Switch & Local Calls, Inter-Switch	BST will bill AT&T in a CRIS format until CABS formats are developed and implemented.	BST will bill AT&T UNE in a CRIS format until CABS formats are developed and implemented.
Toll Calls, IntraLATA*	BST will bill AT&T in a CRIS format until CABS formats are developed and implemented.	BST will bill AT&T in a CRIS format until CABS formats are developed and implemented.
Toll Calls, Intrastate (InterLATA)**	BST will bill the IXC access using existing CABS formats.	BST will bill the IXC access using existing CABS formats.
Toll Calls, Interstate (InterLATA)**	BST will bill the IXC access using existing CABS formats.	BST will bill IXC UNE in a CRIS format until CABS formats are developed and implemented.

\* This assumes that AT&T is using BST resold IntraLATA toll.

\*\* Positions may change as a result of Federal Court Appeals, Stays, and/or applicable Commissions' Orders.

ATTACHMENT 4

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION



In re: Petitions by AT&T Communications )  
of the Southern States, Inc.; MCI )  
Telecommunications Corporation; MCI Metro )  
Access Transmission Services, Inc. for )  
arbitration of terms and conditions of a )  
proposed agreement with BellSouth )  
Telecommunications, Inc. concerning )  
interconnection and resale under the )  
Telecommunications Act of 1996 )  
\_\_\_\_\_ )

Docket No. 960833-TP

Docket No. 960846-TP

Filed: June 23, 1997

**BELLSOUTH'S RESPONSE AND MEMORANDUM IN OPPOSITION TO  
AT&T'S MOTION TO COMPEL COMPLIANCE**

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its response and memorandum in opposition to AT&T's Motion to Compel Compliance, and states the following:

AT&T's Motion to Compel Compliance should be denied because it is based upon fundamental mischaracterizations of Orders of the Florida Public Service Commission ("Commission") and of the current status of the "rebundling" issue. Further, the arguments raised by AT&T in its Motion present perhaps the most obvious example to date of AT&T's attempts to misconstrue to its benefit any issue left unresolved by the Commission's previous Orders. For these reasons, AT&T's Motion should be denied and this Commission should further issue unavoidable directions to

AT&T as to what it may (and may not) do pursuant to the Orders that have been entered.

The current situation is that AT&T has, as set forth in its motion, requested a trial in which it would be allowed to purchase unbundled network elements ("UNEs") in combinations that replicate existing BellSouth services. AT&T proposes to pay for the trial service (and later all BellSouth services recreated through rebundling) at the total price of the UNEs that are utilized. To date, BellSouth has declined to allow AT&T to do this because, contrary to AT&T's assertions, the Commission has not authorized (and, in fact, has expressed concern about the prospect of) recombination of UNEs at the prices AT&T requests. Again, AT&T is not simply purchasing UNEs, but rather the preassembled combination of UNEs that comprise a BellSouth service. AT&T's request/demand, thus, does not involve any real unbundling. Instead, AT&T desires to simply buy the service at the price of the total UNEs that comprise the service.

The proper resolution of this matter turns upon three aspects of this Commission's previous Orders: (1) the price for UNEs has been set; (2) the Commission has ordered that AT&T may recombine UNEs in any way that it wishes; (3) the Commission has also stated that it has not ruled upon the price of a rebundled service, i.e., UNEs that are combined to replicate an existing BellSouth retail service. AT&T would, no doubt, agree that the first two Commission decisions set forth above are pertinent to this dispute. In fact, AT&T relies upon both decisions in its Motion. Inexplicably, AT&T has simply decided to act as if the third conclusion reached by this Commission does not exist.

In its Motion, AT&T implies that this Commission's Final Order On Motions For Reconsideration (Order No. PSC-97-0298-FOF-TP, Issued March 19, 1997) somehow supports AT&T's claim that the price for rebundled network elements has been set. To the contrary, the Commission's Order contained the following language on this point:

In our original arbitration proceeding in this docket, we were not presented with the specific issue of the pricing of recombined elements when recreating the same service offered for resale . . . .

Furthermore, we set rates only for the specific unbundled elements that the parties requested. Therefore, it is not clear from the record in this proceeding that our decision included rates for all elements necessary to recreate a complete retail service. Thus, it is inappropriate for us to make a determination on this issue at this time.

(Order, p. 7).

The Commission, however, further stated that it "would be very concerned if recombining network elements to recreate a service could be used to undercut the resale price of the service." (Order, p. 8).

In an effort to avoid any confusion on this point, BellSouth submitted to the Commission for approval a final arbitrated agreement that included language to reflect both the Commission's pronouncement that it had not ruled upon the price of recombined elements and the Commission's stated concern. Specifically, the language proposed by BellSouth would have stated that "[f]urther negotiations between the parties should address the price of a retail service that is recreated by combining UNEs," and that this price should not undercut the resale price of any retail service.

AT&T responded to this proposed language in its Motion to Approve Final Arbitrated Interconnection Agreement by, first, making a passing mention of this



"Commission's concerns expressed in the Reconsideration Order about the possibilities that the price of the combination of UNEs used to provide a service may be less than the equivalent resale price". AT&T then coyly observed (without stating its own belief) that the Commission "does not believe that it is possible to have this situation because not enough UNEs have been approved to fully duplicate a BellSouth service". (Motion, p. 4). AT&T then characterized the Commission's concerns regarding this pricing issue as simply "speculative". Id. AT&T further stated that "if it ever arises", the language in the agreement is adequate to resolve the point.<sup>1</sup> BellSouth, believed to the contrary, and stated so in its Response to AT&T's Motion.

Nevertheless, on May 27, 1997, the Commission entered an Order (Order No. PSC-97-0602-FOF-TP) in which it required both parties to sign an agreement that included exactly the language prescribed in the Commission's previous Final Order Approving Arbitrated Agreement. As to the language that BellSouth sought to insert into the contract concerning the price of rebundled elements, the Commission stated the following:

we expressed concerns with the potential pricing of UNEs to duplicate a resold service at our Agenda Conference, and we expressed our concerns in our Order in dicta; however, we stated that the pricing issue associated with the rebundling of UNEs to duplicate a resold service was not arbitrated. . . Accordingly, BellSouth's proposed language shall not be included in the agreement.

(Order, p. 7) (emphasis added).

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<sup>1</sup> The language referred to by AT&T was the extremely limited language of § 36.1 that referred to negotiations to eliminate duplicate charges that might result from purchasing multiple UNEs.